

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Juan A. Gonzalez (Respondent) was employed as a Registered Nurse at Calipatria State Prison, Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state industrial member of CalPERS. On September 27, 2022, Respondent applied for service pending industrial disability retirement (SR pending IDR) based on otolaryngological (tinnitus) and psychological (PTSD) conditions. Respondent retired for service effective September 1, 2022, and has been receiving service retirement benefits since then.

As part of CalPERS' review of Respondent's medical condition, two board-certified specialists evaluated him. Geoffrey A. Smith, M.D., a board-certified Otolaryngologist, performed an Independent Medical Examination (IME) regarding Respondent's otolaryngological (tinnitus) condition. Matthew F. Carroll, M.D., a board-certified Psychiatrist, performed an IME regarding Respondent's psychological condition. Both IME's interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Both specialists opined that Respondent was not substantially incapacitated from the performance of his usual job duties as a Registered Nurse for Respondent CDCR.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position. Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH).

A hearing was held on September 4, 2024. Neither Respondent nor Respondent CDCR appeared at the hearing despite each receiving proper and timely service of the notice of the hearing. A default was taken as to both Respondent and Respondent CDCR pursuant to Government Code section 11520, subdivision (a).

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, the IME reports from Dr. Carroll and Dr. Smith were admitted into evidence for all purposes. Dr. Carroll opined that there was no objective evidence to

support Respondent's claim that he experienced an "anacoustic shockwave or blast." Furthermore, even if such a traumatic event had occurred, Dr. Carroll found no evidence that construction work in the prison would bring up memories "that were now causing him traumatic stress disorder." Dr. Carroll believes that Respondent was exaggerating his condition, noted that Respondent was able to telework prior to retiring, and found no evidence Respondent was unable to continue working. Dr. Carroll concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any psychological condition.

Dr. Smith opined that Respondent has mild, high frequency, neurosensory hearing loss. Dr. Smith found that Respondent's claimed tinnitus is a subjective complaint that may cause him difficulties in concentrating or his ability to write. Dr. Smith found no objective findings that impacted Respondent's ability to complete his usual job duties. Dr. Smith concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any otolaryngological conditions.

After considering all the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to meet his burden of establishing by a preponderance of the evidence that he is substantially incapacitated. Furthermore, the only medical evidence that was admitted established that Respondent was not substantially incapacitated. The ALJ found that both Dr. Smith and Dr. Carroll presented competent medical evidence through their examination and review of Respondent's medical records. Accordingly, the ALJ concluded that Respondent was not substantially incapacitated for the performance of his usual job duties as a Registered Nurse for Respondent CDCR due to otolaryngological or psychological conditions when he applied for disability retirement.

Pursuant to Government Code section 11517, subdivision (c)(2)(C) the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends that the word "situation" be added after "/psychological" and before "that" in paragraph 12 on page 7; "§ 22156" be replaced with "§ 21156" in paragraph 1 on page 8 and the redundant "due to weather or spillage" be removed in paragraph 8 on page 5.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board, as modified.

November 20, 2024

Bryan Delgado
Attorney